

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 GOLDMAN SACHS (MALAYSIA) SDN. BHD.,

7 Defendant.
8 -----x

20-CR-438 (MKB)

United States Courthouse
Brooklyn, New York

June 9, 2021
10:00 a.m.

9 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE MARGO K. BRODIE
10 UNITED STATES CHIEF DISTRICT JUDGE
VIA VIDEOCONFERENCE

11 APPEARANCES

12 For the Government:

UNITED STATES ATTORNEY'S OFFICE
Eastern District of New York
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Brooklyn, New York 11201
BY: ALIXANDRA E. SMITH, AUSA
DREW ROLLE, AUSA

15 -and-

DOJ-CRM POC DEB SACHS
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Washington, D.C. 20530
BY: BRENT WIBLE, ESQ.
NIKHILA RAJ, ESQ.
JENNIFER AMBUEHL, ESQ.

19 For the Defendant:

PAUL HASTINGS LLP
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Washington, D.C. 20036
BY: ROBERT D. LUSKIN, ESQ.

21 -and-

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BY: NICOLAS BOURTIN, ESQ.

24 (Continued on next page.)
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1 APPEARANCES (Continued.)

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9 EXCHANGE COMMISSION
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10 BY: DAVID A. MARKOWITZ, ESQ.

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23
24 Proceedings recorded by mechanical stenography. Transcript
25 produced by computer-aided transcription.

PROCEEDINGS

1 MS. SMITH: Alixandra Smith, Drew Rolle, Brent
2 Wible, Nikhila Raj and Jennifer Ambuehl, a couple of people
3 are on the phone instead of on the video just for technical
4 reasons.

5 THE COURTROOM DEPUTY: For the defendant, who is
6 here.

7 MR. LUSKIN: For Goldman Sachs, Robert Luskin, Nick
8 Bourtin, and we are together with the client. Mark Filip will
9 be on the phone. And for the client, Kathy Ruemmler and David
10 Markowitz.

11 THE COURT: Good morning, everyone. Are we ready to
12 proceed?

13 MR. LUSKIN: On behalf of Goldman Sachs we're ready,
14 your Honor.

15 THE COURT: Mr. Rolle, I almost don't recognize you,
16 you look very different.

17 MR. ROLLE: This has been going on quite awhile.

18 THE COURT: So Ms. Ruemmler, is that how you
19 pronounce your name?

20 MS. RUEMMLER: Yes, thank you, your Honor.

21 THE COURT: Are you ready to proceed to sentencing
22 today?

23 MS. RUEMMLER: Yes.

24 THE COURT: Have you discussed with your lawyer
25 proceeding by video?

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1 MS. RUEMMLER: I have.

2 THE COURT: And do you consent to doing so?

3 MS. RUEMMLER: I do.

4 THE COURT: Ryan, why don't you call the case so
5 we'll get started.

6 THE COURTROOM DEPUTY: Yes, Judge. This is criminal
7 cause for sentencing. Docket 20-CR-438. United States versus
8 Goldman Sachs.

9 As a reminder to everyone on the line: Persons
10 granted remote access to proceedings are reminded of the
11 general prohibition against photographing, recording, and
12 rebroadcasting of court proceedings. Violation of these
13 prohibitions may result in sanctions, including removal of
14 court-issued media credentials, restricted entry to future
15 hearings, denial of entry to future hearings, or any other
16 sanctions deemed necessary by the court.

17 Will the parties please state their appearance for
18 the record beginning with the government.

19 MS. SMITH: Good morning, your Honor. Alixandra
20 Smith for the United States and with me is my colleague, Drew
21 Rolle, along with DOJ trial attorneys Brent Wible, Jennifer
22 Ambuehl and Nikhila Raj.

23 THE COURT: Good morning to all of you. And for the
24 defense.

25 MR. LUSKIN: Good morning, your Honor. Robert

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1 Luskin. With me are my colleague Nick Bourtin and on the
2 phone Mark Filip, and on behalf of Goldman Sachs, Kathy
3 Ruemmler. The court has previously approved her substitution
4 as counsel for Goldman and as an attachment to the
5 government's sentencing memo are copies of the appropriate
6 board resolution authorizing Ms. Ruemmler to act on behalf of
7 Goldman Sachs.

8 THE COURT: I've reviewed those and approved her
9 substitution.

10 MR. LUSKIN: Thank you, your Honor.

11 THE COURT: So Goldman Sachs (Malaysia), which I'll
12 refer to as Goldman Malaysia pled guilty before me
13 October 22nd, 2020. They pled pursuant to an agreement
14 subject to the Federal Rule of Criminal Procedure 11(c)(1)(C)
15 to a sole count of an information charging conspiracy to
16 violate anti-bribery provisions of the Foreign Corrupt
17 Practices Act.

18 I accepted the terms of the plea agreement --
19 (Audio interference.)

20 So I'm going to ask everyone to mute your phone
21 unless you're speaking and that will cut down on the feedback
22 so that the court reporter can hear us all.

23 I accepted the terms of the plea agreement at that
24 time. The parties waived preparation of the presentence
25 report and so the only document I have before me, in

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1 preparation for a sentencing, is a June 4th, 2021 letter
2 submitted by the government on behalf of all parties.

3 Now, I know that I do not have to calculate the
4 guideline analysis because of the type of plea, but I am going
5 to do so anyway, since the guideline calculation is relevant
6 to a determination as to whether or not the plea is
7 reasonable.

8 According to the sentencing letter filed by the
9 government on behalf of the parties, the total offense level
10 is 48, the culpability score is eight and that results in a
11 base fine of \$1,607,700,000 and a fine range of \$2,572,320,000
12 and \$5,144,640,000. Please correct me if I called any of
13 those figures incorrectly.

14 Having accepted the guilty plea, I am going to
15 pronounce sentence unless either side would like to be heard.

16 MR. LUSKIN: Nothing from the bank, your Honor.

17 MS. SMITH: No, your Honor, from the government.

18 THE COURT: Okay. So I hereby sentence Goldman
19 Malaysia, consistent with the terms of the plea agreement, and
20 impose a sentence of a total criminal fine of \$2,315,088,000,
21 Goldman Malaysia will pay 500,000 of that amount as a criminal
22 fine within 10 days of today. Goldman Sachs shall pay
23 \$1,263,088,000 to the U.S. Treasury within 10 business days of
24 today's sentencing and the balance of 1,052,000,000 will be
25 credited against the total fine to other authorities with

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1 regard to the coordinated global resolution as set forth in
2 the plea agreement. I am not going to itemize who gets
3 credited for what unless the parties believe it is necessary
4 to do so.

5 I am also imposing a special assessment of \$400 as I
6 am required to do so.

7 Any comments from the parties before I discuss the
8 3553(a) factors and why this sentence is reasonable.

9 MS. SMITH: Your Honor, just from the government
10 just so that it's clear, the total criminal penalty to the
11 United States is 1,263,088,000. And so the 500,000 penalty
12 that Goldman Malaysia pays comes off of that and so the
13 remainder that Goldman Sachs will be paying pursuant to the
14 DPA is 1,262,588,000.

15 THE COURT: Thanks for that clarification.

16 The 500,000 paid by Goldman Malaysia will be
17 500,000, will be deducted from the \$1,263,088,000, correct?

18 MS. SMITH: That's correct. Thank you.

19 THE COURT: Okay. Any further clarification or any
20 further comments before I discuss the 3553(a) factors?

21 MS. SMITH: No, your Honor. Thanks.

22 MR. LUSKIN: No, your Honor.

23 THE COURT: Having imposed a sentence agreed to by
24 the parties I now explain why this sentence is appropriate
25 consistent with 3553(a).

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1 The agreed-upon fine is appropriate based on the
2 relevant guidelines and it avoids unwarranted sentencing
3 disparities among similarly situated defendants. As I
4 mentioned, the agreed-upon fine is \$2,315,088,000. That
5 amount is 10 percent below the applicable guideline range that
6 I discussed earlier. As the parties note in their joint
7 submission, the proposed criminal fine not only reflects the
8 10 percent discount from the bottom of the applicable
9 sentencing guideline range, but it is based on the applicable
10 FCPA corporate enforcement policy which is critical to
11 avoiding unwarranted sentencing disparities between Goldman
12 Malaysia and other entities that have pled guilty to criminal
13 violations of the FCPA's anti-bribery provision.

14 In addition, this discount is less than the
15 25 percent maximum discount allowed because of the failure of
16 defendants to voluntarily disclose the relevant conduct and
17 also because of certain issues initially with the cooperation,
18 but as also noted in the submissions, it reflects the fact
19 that Goldman Malaysia's performance across three key factors
20 considered by the government which is consistent with all
21 FCPA-related cases nationwide, and those three factors were
22 whether the conduct was voluntarily self disclosed, here it
23 was not. Whether defendant provided full cooperation, here
24 only partial cooperation credit was awarded for the
25 cooperation, and whether the defendant has engaged in

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1 remediation, which here they have engaged in remedial
2 measures. I'm not going to discuss those matters as they are
3 set forth in the plea agreement.

4 Further, as the parties note, the decision to credit
5 penalty amounts paid by Goldman Sachs to other domestic and
6 foreign enforcement and regulatory entities against the total
7 criminal penalty, is consistent with DOJ policy regarding the
8 coordination of corporate resolution penalties that arise from
9 the same conduct to prevent the unnecessary imposition of
10 duplicative fines, penalties and/or forfeitures against a
11 corporate entity.

12 I note that the sentence imposed also reflects the
13 seriousness of the crime. The serious nature of the crime
14 here cannot be overstated. Goldman Malaysia and others,
15 including high level Goldman officials, conspired to corruptly
16 bribe foreign officials and the sentence provides for general
17 deterrents.

18 It also appropriately reflects the fact that Goldman
19 Sachs has no prior criminal history and is continuing to
20 cooperate with the government.

21 In sum, for all of these reasons I find that the
22 sentence imposed is sufficient, but not greater than necessary
23 to punish Goldman Malaysia for the offense of conviction.

24 Goldman Malaysia does have the right to appeal your
25 conviction if you believe that the guilty plea was somehow

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1 unlawful or involuntary or if there is some other fundamental
2 defect that was not waived by the guilty plea. Under some
3 circumstances a defendant has the right to appeal the
4 sentence, however, a defendant may waive that right as part of
5 a plea agreement, and Goldman Malaysia has entered into a plea
6 agreement and has waived its right to appeal or otherwise
7 challenge the sentence that I imposed. Such waivers are
8 generally enforceable but if you believe the waiver itself is
9 invalid, you can present that theory to the Appellate Court.
10 Any Notice of Appeal must be filed within 14 days of the entry
11 of judgment or within 14 days of the filing of a Notice of
12 Appeal by the government. If requested, the clerk can file a
13 Notice of Appeal on your behalf and if for some reason Goldman
14 Malaysia cannot afford the cost of an appeal, or appellate
15 counsel, it can certainly request that the fees be waived and
16 counsel be appointed on appeal.

17 Are there any other matters that we need to discuss
18 today.

19 MS. SMITH: Nothing from the government, your Honor.

20 MR. LUSKIN: And nothing from Goldman Malaysia, your
21 Honor.

22 THE COURT: Okay. Well, this concludes the
23 resolution of this matter, and I wish the parties good luck
24 and a good day.

25 MS. SMITH: Thank you, your Honor.

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1 MR. LUSKIN: Thank you very much, your Honor.

2 (Matter concluded.)

3 I certify that the foregoing is a correct transcript from the
4 record of proceedings in the above-entitled matter.

5 s/ Georgette K. Betts

June 9, 2021

6 GEORGETTE K. BETTS

DATE

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GEORGETTE K. BETTS, RPR, FCRR, CCR
Official Court Reporter